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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

In re JEMELY Z., et al., Persons Coming  
Under the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent.

v.

JERARDO Z.,

Defendant and Appellant.

B246576

(Los Angeles County  
Super. Ct. No. CK96043)

APPEAL from orders of the Superior Court of Los Angeles County. Sherri Sobel,  
Juvenile Court Referee. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and  
Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and  
Jessica S. Mitchell, Deputy County Counsel for Plaintiff and Respondent.

Jerardo Z. (father) appeals from the juvenile court's jurisdictional orders establishing dependency jurisdiction over two of his children, Jemely (born April 2009) and Antonio (born October 2012), pursuant to Welfare and Institutions Code section 300.<sup>1</sup> Father also challenges the dispositional orders requiring him to attend anger management and parenting classes. Father contends that substantial evidence does not support the juvenile court's jurisdictional findings as to him, and that the juvenile court erred in ordering him to attend anger management and parenting classes. We find father's contentions unavailing and affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Father and Emely N. (mother) are the parents of Jemely and Antonio<sup>2</sup> Mother is also the mother of Mike C. (born December 2003). Father is also the father of Dominic, who was 14 years old at the time of the proceedings.<sup>3</sup> Father and mother had an "on again off again" relationship, with mother and the children occasionally living with father in Merced, California, and occasionally returning to Downey, California to live with maternal grandmother (MGM).

#### **Initial detention**

The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in October 2012 when mother gave birth to Antonio in a motel room after using methamphetamine. Antonio was taken to Downey Regional Medical Center and then to White Memorial Hospital because he tested positive for methamphetamine and was jittery at birth. Antonio was born at 34 weeks gestation after mother went into premature labor due to her drug use.

Mother admitted she had about one year experience with methamphetamine use. Mother was using methamphetamine during the first trimester of her pregnancy. She

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<sup>1</sup> All further statutory references are to the Welfare & Institutions Code.

<sup>2</sup> Mother is not a party to this appeal.

<sup>3</sup> Mike and Dominic are not subjects of this appeal.

stopped for a while after discovering her pregnancy, but resumed again about two months before Antonio's birth.

The social worker interviewed father in person on October 4 and 5, 2012, and in subsequent phone calls and meetings. Father was aware of mother's drug use. He had taken her to a prenatal appointment early in her pregnancy, and she tested positive for methamphetamine. Father tried to help mother by taking her to AA meetings. Father denied a drug history himself. He stated he was able to care for both Jemely and Antonio. He had made arrangements with his job for time off, and had some savings to hold him over.

The social worker also interviewed MGM and Mike. According to MGM, she had been a part of Mike's life since his birth and was able to care for him as long as necessary.

DCFS took the children into protective custody on October 15, 2012. Mike was placed with MGM, and Jemely and Antonio were released to father.

### **Section 300 petition and detention**

On October 18, 2012, DCFS filed a section 300 petition alleging that the children were at risk due to mother's methamphetamine use and baby Antonio's positive screening for methamphetamine at birth.

On October 18, 2012, the juvenile court held a detention hearing. The court made detention findings with respect to mother. The court detained Mike with MGM and released Jemely and Antonio to father. The court ordered visits for mother three times per week to be monitored by a DCFS approved monitor.

### **November 15, 2012 reports and amended petition**

In its November 15, 2012 detention report, DCFS set forth the details of an interview with Mike. Mike reported that father had hit him on several occasions with a belt and a slipper on his buttocks, causing pain. Mike made the same statement in a

separate interview with the MAT assessor, Ms. Marin.<sup>4</sup> Additionally, Mike had reported to Ms. Marin that father would force him to clean up the basement of the family home and pick up live cockroaches. Mike also stated that father would force him to eat foods he did not like and threatened that Mike would have to eat his vomit if he threw up the unwanted food.

DCFS also reported that a referral was made to Merced County as to allegations of physical abuse by father against Dominic. Dominic resided part-time with father and part-time with his mother, Myra P. The referral was assigned to Child Protective Services of Merced County. DCFS was informed that the referral had not yet been investigated.

On November 5, 2012, a DCFS social worker interviewed Mike at MGM's home. Mike was mature and articulate. He stated that he liked living in Merced, that the home was nice and he had friends there. When asked if he preferred to live in Merced with his stepfather or in Downey with MGM, Mike responded, "I don't know if I want to go with him. I could stay here with my grandmother because I have friends here too and maybe I could stay with [father] too." Mike indicated that he liked father and denied being afraid of him.

The social worker specifically asked Mike about discipline. Mike responded that sometimes father would turn the television away from him or make him sit down on his bed and think. When asked if there was anything else, Mike stated, "Sometimes he would hit me with a soft chancla (slipper) or with a belt. First, he would hit me with a chancla and then if I still didn't listen, he would hit me with a belt." Mike stated he would only get hit on the buttocks with his pants on. The social worker asked Mike if it hurt when father hit him, and Mike responded, "Well, he hits me hard when he's in a bad mood and soft when he's not in a bad mood. When he hits me hard, it hurts." The social

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<sup>4</sup> MAT stands for multidisciplinary assessment team, which is a collaboration between DCFS and the Department of Mental Health (DMH) designed to ensure the immediate and comprehensive assessment of children and youth entering out-of-home placement. (DCFS Procedural Guide 0600-500.05, Multidisciplinary Assessment Team (MAT), <<http://www.ladcf.org/katieA/docs/MATPolicy.pdf>>.)

worker asked if he ever noticed a mark on his buttocks, to which Mike replied, “I can’t see my butt so I don’t know. But there was never blood.” Mike denied that mother ever noticed a bruise. The child explained that father began hitting him with a belt when he was in the first grade, at age six. Prior to first grade, father would only hit him softly on the hand. Mike indicated that Dominic would be disciplined in the same way. He denied that father ever used physical discipline with Jemely.

In an interview on November 7, 2012, father stated that he was raised “strict.” When asked about discipline, he stated that he would turn off the television or tell the children to go to their rooms and think about what they had done. As to Mike, father stated, “I was strict with him. My family was strict with me so I’m strict. I admit I’m strict. I have a strong attitude. I hate lies.” Father initially denied using physical discipline with Mike or Dominic, but then stated, “Actually, one time in Merced, I took my daughter’s belt and I hit my son and Mike on the butt with the belt. They were fighting and I hit them with the belt. It was just that one time.” Father denied leaving any marks or bruises on the children, and denied having the children pick up live insects. Father also denied threatening Mike with the punishment of eating his own vomit. However, father admitted to telling Mike that he had to eat tuna. Father tells the children that they must eat whatever food is prepared at home. In father’s opinion, Mike was spoiled by his grandmother. Mike would ask for McDonald’s or a sandwich rather than eating the food that his mother cooked. Father would tell him he had to eat the food that was served in the house. Father stated that he loved Mike like a son.

MGM was also interviewed. She stated she never saw father use physical discipline with the children. She indicated she had no concerns about Jemely and Antonio being left in father’s care. MGM was aware that Mike had recently revealed that father had hit him in the past with a chancla (slipper). A maternal uncle, Yovan N., was also interviewed. Yovan stated he had no concerns about the children in father’s care. He described father as “a nice guy,” explaining “he’s strict and can come across with an attitude. But he’s a good dad and he’s always looking after the children. He’s also worried about my sister. It’s true he tried to get her help.”

DCFS also included in its report statements from the MAT assessor who had interviewed Mike. These statements included the allegation that father had hit Mike on the buttocks with a belt over his clothes; that father would hit him on the buttocks or the back of his head with a shoe or sandal; that father would yell in his ear and pull both his ears; that he was forced to clean the yard in hot weather; that he was made to clean the basement by picking up cockroaches and spiders with his bare hands; and that he was forced to stick his hand in the toilet to remove toilet paper when the toilet was clogged. Mike also reported that Dominic was hit with a belt; forced to pick up live cockroaches and spiders with his bare hands; and would get locked in the basement for several hours as a form of punishment.

The social worker was unable to interview mother because she did not make herself available for that purpose.

On November 8, 2012, DCFS filed a first amended petition. The amended petition added counts as to father under subdivisions (b) and (j), alleging that on prior occasions father physically abused Mike by hitting him with a belt on the child's buttocks and inflicting pain. In addition, the petition alleged that father forced Mike to pick up live insects, including cockroaches, while cleaning the basement, forced him to eat food he did not like and would threaten the child that he would have to eat vomit if he threw up the unwanted food.

### **Interim review report**

DCFS filed an interim review report on December 27, 2012. DCFS had assessed father's home on December 3, 2012. Father's home was appropriate and no safety concerns were noted. However, father acknowledged that mother visited with Jemely and Antonio in the home. Father was unable to articulate clearly where mother stayed while visiting. The social worker reminded father that mother was not to have unmonitored visits with the children and she was not allowed to reside in the home with the children. DCFS requested that the case remain open as to father due to the likelihood that mother and father remained in a relationship.

DCFS recommended family reunification services for the children with mother, and family maintenance services for the family with father. DCFS also recommended that father participate in individual counseling, a parenting program, and a Nar-Anon support group.

### **Adjudication**

On December 27, 2012, the juvenile court adjudicated the first amended petition. Mother settled her portion of the case and pled no contest. The court received the DCFS reports into evidence.

The matter proceeded to argument. Father's counsel asked that the allegations against father be dismissed. He argued that the allegations against father did not support a finding of abuse, but that father was only trying to impose discipline and structure on the children. Father's counsel also argued that none of the maternal relatives had any concerns about the children being with father.

The court indicated that it had read the reports, noting that that Mike's comments were consistent throughout. The court sustained the counts against father, stating:

“Jemely and Antonio's father and the stepfather [of Mike] . . . physically abused Mike by striking the child with a belt on his buttocks and inflicting pain. And the rest of that stays: to pick up the bugs and telling him he's going to eat tuna because that's what's going to be served. He says grandma spoils him. That's probably true. But to turn around and say you have to eat a food at eight years old that you hate and then say if you throw it up you have to eat it is not a good way to teach a child discipline. You know, make him grilled cheese.”

The court found a substantial risk of danger existed if the children were returned to mother. However, the court stated “I cannot find by clear and convincing evidence that return would create a substantial risk of danger to leaving the two younger children with the . . . father.” However, the court ordered father to attend a parenting class, individual counseling, and a NarcAnon program at least twice a week. The court also ordered father into anger management. Father's counsel protested, “Your Honor, may I be heard?” To which the court responded “No.”

The following exchange then took place:

“[Father’s counsel]: Your Honor, then we’re objecting to the court’s--

“The court: Thank you.

“[Father’s counsel]: Just for the record, these--

“The court: I gotcha. Thank you.

“[Father’s counsel]: Your Honor, may I state--

“The court: No, you may not. No.

“[Father’s counsel]: I need to make my objection.

“The court: No, you are not.

“[Father’s counsel]: I need to state a basis for my objection, your Honor.

“The court: What you need to do is take your remedy. That’s what you need to do. You already made your objection. You have now objected. Now you may take your remedy.

“[Father’s counsel]: In order for me to go get my remedy, I need to state a couple more things.

“The court: I found that this gentleman used a belt on a child. That’s it. Anger management. He also says, and the entire family agrees, that he’s very strict and has very strict rules for his kids. He needs anger management to sort that out.”

Father filed his notice of appeal from the jurisdictional and dispositional orders on December 27, 2012.

## **DISCUSSION**

### **I. Standard of review**

We review the juvenile court’s jurisdictional findings under the substantial evidence standard. (*In re David M.* (2005) 134 Cal.App.4th 822, 829; *In re Heather A.*



(1996) 52 Cal.App.4th 183, 193.) Under this standard, we review the record to determine whether there is any reasonable, credible, and solid evidence to support the juvenile court's conclusions. We resolve all conflicts in the evidence, and make all reasonable inferences from the evidence, in support of the court's orders. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) We review the juvenile court's dispositional orders for abuse of discretion. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 454; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006 (*Christopher H.*).)<sup>5</sup>

## II. Jurisdictional findings

Father argues that the evidence does not support the trial court's true findings as to the two allegations sustained as to him. The section 300, subdivision b-4 allegation read:

“b-4 (amended)

“On prior occasions, the children, Jemely and [Antonio]'s father, and the child Mike[']s stepfather, . . . physically abused the child, Mike, by striking the child with a belt on the child's buttocks and inflicting pain. [Father] . . . has forced the child to pick up live insects including cock roaches while cleaning the basement of the family home. [Father] also forced the child to eat foods he did not like and would threaten the child that he would have to eat [his] vomit if he regurgitated the unwanted food. Such physical and emotional abuse was excessive and caused the child unreasonable pain and suffering. The physical abuse of the child by the father endangers the child's physical health, safety and well-being, creates a detrimental home environment and places the child and the child's siblings, Jemely and Antonio, at risk of physical harm, damage, physical abuse, and failure to protect.”

The section 300, subdivision j-1 allegation for “abuse of sibling” contains identical allegations.

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<sup>5</sup> Father argues that the substantial evidence test should be used to analyze dispositional orders, citing *In re Jasmin C.* (2003) 106 Cal.App.4th 177, 180. Because the trial court has broad discretion to order reunification and family maintenance services between a parent and child, we find the abuse of discretion standard appropriate in this case. (See *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 454 [“The court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion”].)

### ***A. Judiciability***

Father acknowledges that some courts, including this court, have refused to address specific jurisdictional findings based on mootness and non-justiciability grounds in cases such as this where some, but not all, of the jurisdictional findings are challenged. (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 [“As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate”]; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491 [“it is necessary only for the court to find that one parent’s conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child”].) “[A]n appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence. [Citations.]” (*In re I.A.*, at p. 1492.)

Father argues that in this case, there are valid reasons for addressing the merits of his arguments regarding counts b-4 and j-1. In support of his position, father cites *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*). In *Drake M.*, the father challenged a single jurisdictional finding against him involving his use of medical marijuana. DCFS argued that the unchallenged findings as to mother would continue to support jurisdiction, therefore father’s appeal was nonjusticiable. (*Id.* at p. 762.) The *Drake M.* court decided to consider the merits of father’s appeal, stating:

“Here, the outcome of this appeal is the difference between father’s being an ‘offending’ parent versus a “non-offending’ parent. Such a distinction may have far-reaching implications with respect to future dependency proceedings in this case and father’s parental rights. Thus, although dependency jurisdiction over Drake will remain in place because the findings based on mother’s conduct are unchallenged, we will review father’s appeal on the merits.”

(*Drake M.*, *supra*, 211 Cal.App.4th at p. 763.)

Father argues that the jurisdictional findings as to father could have an effect on current or future dependency proceedings. In addition, the outcome of the appeal could mean the difference between father being an “offending” versus a “non-offending”

parent. In other words, father argues, the question of whether counts b-4 and j-1 were correctly sustained matters.

Here, as in *Drake M.*, the jurisdictional findings serve as the basis for a challenged dispositional order and may be prejudicial in the current or future dependency proceedings. We agree with father that the outcome of the appeal could mean the difference between father being an “offending” rather than a “non-offending” parent. (See *Drake M.*, *supra*, 211 Cal.App.4th at pp. 762-763.) We therefore address father’s contentions on the merits.<sup>6</sup>

***B. Substantial evidence supported the true findings for counts b-4 and j-1***

Father argues that no reasonable or credible evidence supports the finding that father physically abused Mike. Father is wrong.

As the juvenile court pointed out, Mike’s reports of physical abuse were consistent. In addition, father admitted to striking Mike, as well as Dominic, with a belt. This constitutes substantial evidence of physical abuse.

Father does not deny that he disciplined Mike by striking him with a belt. However, father argues that this form of discipline did not harm Mike, nor put him at risk of serious physical harm. Father cites *In re Jasmine G.* (2000) 82 Cal.App.4th 282, 288-292 for the proposition that not all forms of corporal punishment can trigger dependency jurisdiction. Further, father argues, it is not the juvenile court’s role to enforce any

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<sup>6</sup> The First District Court of Appeal has taken a different position. In *In re I.A.*, Division One wrote: “Father asks us to review the evidentiary support only for the juvenile court’s jurisdictional findings involving *his* conduct. Because he does not challenge the jurisdictional findings involving Mother’s drug abuse, however, any decision we might render on the allegations involving Father will not result in a reversal of the court’s order asserting jurisdiction. The juvenile court will still be entitled to assert jurisdiction over the minor on the basis of the unchallenged allegations. Further, the court will still be permitted to exercise personal jurisdiction over Father and adjudicate his parental rights, if any, since that jurisdiction is derivative of the court’s jurisdiction over the minor and is unrelated to Father’s role in creating the conditions justifying the court’s assertion of dependency jurisdiction.” (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1492.) We choose to follow the analysis set forth in *Drake M.*

philosophy of discipline or child rearing. Father argues that age-appropriate spanking to the buttocks, where there is no evidence of physical injury, does not constitute serious physical harm. (See *In re Joel H.* (1993) 19 Cal.App.4th 1185, 1201-1202.) In sum, father asks this court to hold that striking a child on the buttocks with a belt does not create a risk of serious physical harm to the child, as defined in section 300, subdivision (a).

We disagree with father's position that the striking of a child with a belt, even without actual physical harm, does not put the child at risk of serious physical harm. It is within the juvenile court's authority to find that such an act does put a child at risk of serious physical harm. In addition, the juvenile court's decision must be analyzed in the context of the proceedings as a whole. The juvenile court noted that it read all of Mike's comments, all of the reports, and all of father's comments. Therefore we must assume that the juvenile court also considered Mike's statements that father yelled in Mike's ears and pulled his ears; forced him to eat food that he did not like; threatened him with the physically distressing idea of eating his own vomit; and forced him to touch live insects. The juvenile court apparently believed these allegations. We do not reevaluate credibility determinations. (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1373 [juvenile court as trier of fact is sole judge of credibility of witnesses].) Taken as a whole, and especially in light of father's admission that he hit his children with a belt, this evidence was sufficient to support the juvenile court's finding that father's behavior put the children at risk of serious physical harm.

Father next argues that even if the evidence was sufficient to show a risk of serious physical harm to Mike, it fell far short of the mark with respect to Jemely and Antonio. At the time of the jurisdictional hearing, father argues, Jemely was only three years old, and Antonio was less than three months old. Father argues that there was no evidence suggesting that father would employ any form of corporal punishment against these small children. Father points out that he did not begin to use a belt with Mike until Mike was six years old.

The evidence that father used corporal punishment against Mike was sufficient to support a finding of risk as to siblings Jemely and Antonio. In deciding whether jurisdiction of a child is warranted under section 300, subdivision (j), the juvenile court may consider many factors, including “the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the minor.” (*In re Joshua J.* (1995) 39 Cal.App.4th 984, 994.) The juvenile court must “consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j).” (*In re I.J.* (2013) 56 Cal.4th 766, 774.)

Father is correct that Jemely and Antonio were younger than Mike. However, this fact alone does not insulate them from a risk of substantial harm. The type of abuse described by Mike can be inflicted on younger children. And although Mike recalled that his father did not strike him until he was six years old, the possibility that father might impose such punishment on his younger children remains. Further, even if we could be assured that father would not use a belt to strike Jemely for another two or three years, jurisdiction under section 300, subdivision (j) is still supportable. We need not wait for a child to be harmed in order to intervene. (*In re Leticia S.* (2001) 92 Cal.App.4th 378, 383, fn. 3.) “The purpose of dependency proceedings is to prevent risk, not ignore it.’ [Citation.]” (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.) The evidence supported the juvenile court’s finding that father’s physical abuse of Mike put Jemely and Antonio at risk of substantial physical harm.

### **III. Dispositional orders**

Father concedes that the juvenile court can make “all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child.” (§ 362, subd. (a); *In re Jasmin C.*, *supra*, 106 Cal.App.4th at p. 180.) The problem that the juvenile court seeks to address need not be described in the sustained section 300 petition. (See *Christopher H.*, *supra*, 50 Cal.App.4th at pp. 1006-1008.) In fact, there

need not be a jurisdictional finding as to the particular parent upon whom the court imposes a dispositional order. (See *In re I.A.*, *supra*, 201 Cal.App.4th at p. 1492 [“A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established”].)

Despite his acknowledgement of the juvenile court’s broad authority to impose orders on parents whose children are subject to the jurisdiction of the juvenile court, father argues that the trial court’s orders that father enter anger management and parenting classes were erroneous.<sup>7</sup> He argues that there was no evidence in the record suggesting that father had an anger problem. He further argues that his parenting ability was not a factor that led to the jurisdictional order.

We find that the trial court did not abuse its discretion. There was evidence in the record to support both orders. At disposition, the juvenile court is not limited to the content of the sustained petition when it considers what dispositional orders would be in the best interests of the children. (*In re Rodger H.* (1991) 228 Cal.App.3d 1174, 1183; *Christopher H.*, *supra*, 50 Cal.App.4th at pp. 1006-1008.) Instead, the court may consider the evidence as a whole.

Father admitted to hitting two of his children on the buttocks with a belt -- his stepson, Mike, and his teenage son, Dominic. Eight-year-old Mike reported that father hit him with a belt on more than one occasion, and that father hits him hard when father is in a bad mood. Mike also reported being hit with a sandal or shoe on the back of his head and having his ears pulled. This evidence supports imposition of an order requiring anger management classes.

There was also evidence to support an order that father participate in parenting classes. Mike reported inappropriate parental behavior such as requiring him to pick up

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<sup>7</sup> We agree with father’s position that the forfeiture rule does not apply to father’s arguments regarding these two dispositional orders. Father was not able to articulate his objections to the dispositional orders in juvenile court because the court did not allow his counsel to speak. Under the circumstances, we consider father’s arguments on the merits.

live insects -- an act which gave the child nightmares; and requiring him to eat food he did not like under threat of having to undertake an even more physically repelling activity -- eating his own vomit. Mike also alleged that father required him to put his hand in the toilet when it was clogged. Father admitted to being “strict” and having a “strong attitude” with the children. The allegations of physical abuse, along with these allegations of intimidation, are sufficient to support the court’s order that father attend parenting classes.

### **DISPOSITION**

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

\_\_\_\_\_, J.\*  
FERNS

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.